

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARK WARREN,

Plaintiff,

COMPLAINT
JURY TRIAL DEMAND

-against-

P.O. JOEL MARTINEZ, Shield No. 15116,
P.O. "JOHN DOES" 1-5 and
THE CITY OF NEW YORK,

Defendants.

-----X

Plaintiff, MARK WARREN, by his attorney, ALAN D. LEVINE, ESQ., complaining
of the defendants herein, respectfully alleges as follows:

JURISDICTION

1. This is a civil action, seeking compensatory damages, punitive damages and attorney's fees.
2. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the fourth and fourteenth amendments to the Constitution of the United States.
3. Jurisdiction is founded upon 28 U.S.C. §§1331, 1343 and 1367.
4. Plaintiff, invoking the pendent jurisdiction of this Court, also seeks compensatory and punitive damages for false arrest and battery.

VENUE

5. Venue is properly alleged in the Southern District of New York in that the acts complained of herein occurred within this District.

JURY TRIAL DEMAND

6. Plaintiff hereby demands a trial by jury of all issues in this action that are so triable.

PARTIES

7. At all times relevant hereto, plaintiff, MARK WARREN, was and is a natural person, resident in the County of Bronx, City and State of New York.

8. At all times relevant hereto, defendant P.O. JOEL MARTINEZ, Shield No. 15116 (hereinafter "MARTINEZ") was and is a natural person, employed as a police officer by defendant CITY OF NEW YORK.

9. At all times relevant hereto, defendants P.O. "JOHN DOES" 1-5 were and are natural persons, employed as police officers by defendant CITY OF NEW YORK.

10. At all times relevant hereto, defendant CITY OF NEW YORK was and is a municipal corporation, organized and existing pursuant to the laws of the State of New York.

11. On or about July 1, 2013, this date being within ninety (90) days after the pendent state claims herein sued upon accrued, plaintiff served upon the Comptroller of the City of New York a verified written notice of claim setting forth the time, place, nature and manner in which said claims arose.

12. More than thirty (30) days have elapsed since the aforementioned verified notice of claim was served and the Comptroller has neglected and refused to make payment of said claims.

13. This action is commenced within one year and ninety days from the date the pendent claims herein accrued.

14. The individual defendants are sued in their individual capacities.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
(42 U.S.C. §1983)

15. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "14" hereinabove as if more fully set forth at length herein.

16. On or about April 4, 2013, although he was not present in a motor vehicle, plaintiff was arrested by defendant MARTINEZ and was falsely and maliciously charged with resisting arrest, a misdemeanor; reckless driving, a misdemeanor; driving a motor vehicle while impaired, a violation; and six other violations of the Vehicle and Traffic Law.

17. The summonses for reckless driving and the six Vehicle and Traffic Law violations that were issued to plaintiff by defendant MARTINEZ all alleged that the offenses had occurred on the aforementioned date at 10:32 P.M., in front of the premises 718 East 218th Street, County of Bronx, City and State of New York.

18. The criminal complaint against plaintiff, sworn to by defendant MARTINEZ, alleged that plaintiff had resisted arrest and had operated a motor vehicle while impaired on the aforementioned date at "approximately 10:25 P.M. at front of 735 East 217th Street" in the County of Bronx, City and State of New York.

19. Defendants DOES 1-5 were present with defendant MARTINEZ when he arrested plaintiff.

20. Plaintiff alleges that his arrest and the events complained of herein all took place on the aforementioned date on East 218th Street.

21. At the time of his arrest, without any justification or probable cause therefor whatsoever, the individual defendants threw plaintiff to the ground, and punched and kicked him so as to cause serious injury to his left shoulder and lacerations to his face.

22. Subsequent to his arrest, plaintiff was taken to the stationhouse of the 45th Precinct.

23. From the stationhouse of the 45th Precinct, plaintiff was taken by ambulance to Jacobi Medical Center.

24. At the aforementioned hospital, plaintiff was x-rayed and diagnosed with a dislocation of his left shoulder.

25. At the hospital, plaintiff was also treated for the injuries to his face.

26. From the hospital, plaintiff was taken to the stationhouse of the 47th Precinct.

27. From the stationhouse of the 47th Precinct, plaintiff was taken to Bronx Central Booking.

28. Plaintiff appeared before a Judge of the Criminal Court of the City of New York, County of Bronx, on April 6, 2013, at which time he was arraigned, approximately forty-eight hours subsequent to his arrest.

29. On or about August 13, 2013, plaintiff underwent surgery to repair three labral tears and a partial rotator cuff tear of his left shoulder, which injuries had been inflicted on him by the individual defendants hereto.

30. The individual defendants violated plaintiff's right to be arrested only with probable cause and to be free from the use of excessive force, guaranteed to him by

the fourth and fourteenth amendments to the Constitution of the United States, in that, acting under color of state law, they falsely and maliciously arrested him without probable cause therefor, charging him with two misdemeanors and seven violations and in that they employed force against him so excessive and unreasonable as to cause the injuries enumerated hereinabove.

31. As a result of the aforementioned violations of rights guaranteed to him by the fourth and fourteenth amendments to the Constitution of the United States, plaintiff suffered a loss of his liberty; was seriously and permanently injured as hereinabove described; was rendered sick, sore, lame and disabled; incurred medical expenses; and was compelled to pay for the services of an attorney to represent him in criminal proceedings.

32. By reason of the aforementioned unconstitutional and illegal actions taken against him by the individual defendants hereto, plaintiff has been damaged in an amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against the individual defendants, both amounts to be determined at the trial of this action.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS
AND THE CITY OF NEW YORK
(Battery)**

33. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "32" hereinabove as if more fully set forth at length herein.

34. On or about April 4, 2013, at approximately 10:30 P.M., on East 218th Street, in the County of Bronx, City and State of New York, defendants MARTINEZ and

DOES 1-5, without probable cause therefor, offensively touched plaintiff by violently pushing him to the ground, and kicking him and punching him with such force as to cause serious injury to his left shoulder and lacerations to his face.

35. The aforementioned force used by defendants MARTINEZ and DOES 1-5 was not reasonable under the circumstances.

36. At the aforementioned time and place, defendants MARTINEZ and DOES 1-5 were acting within the scope of their employment by defendant CITY OF NEW YORK.

37. By reason of the aforementioned battery committed against him by defendants MARTINEZ and DOES 1-5, while they were acting within the scope of their employment by defendant CITY OF NEW YORK, plaintiff suffered and continues to suffer serious and permanent physical injury; was rendered sick, sore, lame and disabled; and incurred medical expenses for treatment of his injuries.

38. As a result of the battery committed upon him by defendants MARTINEZ and DOES 1-5, while they were acting within the scope of their employment by defendant CITY OF NEW YORK, plaintiff has been damaged in an amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against the individual defendants, both amounts to be determined at the trial of this action.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT MARTINEZ
AND THE CITY OF NEW YORK
(False Arrest)**

39. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "38" hereinabove as if more fully set forth at length herein.

40. On or about April 4, 2013, at approximately 10:30 P.M., defendant MARTINEZ falsely and maliciously charged plaintiff with two misdemeanors, namely resisting arrest and reckless driving, and seven violations of the Vehicle and Traffic Law, including driving while impaired.

41. The offenses of resisting arrest and driving while impaired were alleged to have occurred in front of 735 East 217th Street in the County of Bronx, City and State of New York, whereas the offense of reckless driving and the six other Vehicle and Traffic Law violations were alleged to have occurred in front of 718 East 218th Street, County of Bronx, City and State of New York.

42. The second set of offenses were alleged to have occurred only seven minutes after plaintiff had allegedly operated a motor vehicle while impaired and had resisted arrest.

43. Plaintiff was illegally, falsely, maliciously, wrongfully and unlawfully kept in confinement at the 45th Precinct, Jacobi Medical Center, the 47th Precinct and Bronx Central Booking for nearly forty-eight hours.

44. At the time he committed the aforesaid acts of false arrest and false imprisonment, defendant MARTINEZ was acting within the scope of his employment by defendant CITY OF NEW YORK.

45. By reason of the false arrest committed against plaintiff by defendant MARTINEZ, while he was acting within the scope of his employment by defendant CITY OF NEW YORK, plaintiff suffered a loss of his liberty, suffered, and continues to suffer, serious and permanent physical injury and incurred medical and legal expenses.

46. As a result of the aforementioned acts of false arrest and false imprisonment committed against him by defendant MARTINEZ, while he was acting within the scope of his employment by defendant CITY OF NEW YORK, plaintiff has been damaged in an amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against defendant MARTINEZ, both amounts to be determined at the trial of this action.

WHEREFORE, plaintiff, MARK WARREN, demands judgment against the defendants, P.O. JOEL MARTINEZ, Shield No. 15116, P.O. "JOHN DOES" 1-5 and THE CITY OF NEW YORK, as follows:

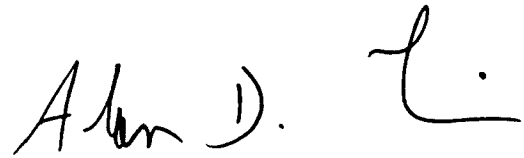
FIRST CAUSE OF ACTION: An amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against the individual defendants, both amounts to be determined at the trial of this action;

SECOND CAUSE OF ACTION: An amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against the individual defendants, both amounts to be determined at the trial of this action; and

THIRD CAUSE OF ACTION: An amount sufficient to compensate him for his injuries as enumerated hereinabove and, in addition, seeks punitive damages against defendant MARTINEZ, both amounts to be determined at the trial of this action.

In addition, plaintiff demands the costs and disbursements of this action, including his attorney's fees, pursuant to 42 U.S.C. §1988.

Dated: Kew Gardens, New York
June 30, 2014

A handwritten signature in black ink, appearing to read "Alan D. Levine". The signature is written in a cursive, flowing style. The first part "Alan D." is connected to the last name "Levine".

ALAN D. LEVINE, ESQ.
Attorney for Plaintiffs
80-02 Kew Gardens Road, Suite 302
Kew Gardens, New York 11415
(718) 793-6363
Our File No. 2279